UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, Plaintiff, vs. THOMAS COMANS III, Defendant.	)	Case No. 2:07-cr-270-RLH-GWF **O R D E R** (Request for Certificate of Appealability–#176)

Defendant Thomas Comans III has filed a notice of appeal (#176) from this Court's denial of his second 28 U.S.C. §2255 motion (See Order, dkt # 174). The document also contains a Request for Certificate of Appealability.

In this matter, Comans has not made a substantial showing that he was denied a constitutional right. 28 U.S.C. §2253(c)(2)(A)(1). First, the §2255 motion in question is his second or successive §2255 motion and was brought without approval of the Ninth Circuit Court of Appeals, as is required by its rules. Second, this matter has been previously appealed, but the issue raised in the §2255 motion in question was not appealed and is procedurally defaulted. Finally, the motion had no merit, as it complained that the introduction of several of Comans' own photographs was erroneous because the law does not prohibit possession of such images, when, in reality, the photographs were introduced solely for the purpose of countering his defense of entrapment by showing propensity.

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Thus, Comans has not raised a substantial question whether his constitutional rights had been denied. Accordingly,

IT IS HEREBY ORDERED that Defendant Comans' Request for Certificate of Appealability is DENIED. No Certificate of Appealability will be issued.

Dated: November 15, 2012.

Roger L. Hunt
United States District Judge